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REVIEW OF LEGISLATION 1907-8

LEGISLATION 392h

COMMERCE AND INDUSTRY

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Governors' messages and legislative enactments of 1907 and 1908 are above all indicative of a serious effort to check loose and dishonest business methods and of a tendency to increase the supervisory power of states over trades and professions; the first may be seen in the earnestness and in the vigor of the recommendations, as well as in the far-reaching character and in the number of measures enacted with regard to adulterations, imitations, misbranding, speculation, warehouse receipts, weights and measures etc.; the second in the creation of various state boards of examiners and inspectors, state commissions and commissioners, etc. While in many instances the creation of state boards was an outgrowth of legislative attempts to curb dishonesty, this was not true of all enactments, as many boards were established for purely regulative purposes, or for statistical, advertising and similar work. The creation of special boards and commissions is not new, but it is interesting to note their multiplication and the variety of subjects with which they are intrusted to deal.

**Weights and measures.** The problem of curbing abuses resulting from cheating through underweight and scant measure is ever existing in all the states and territories of the Union. The Governor of West Virginia in his message of January 8, 1907 (p.92-93) speaks of a communication he received from the Bureau of Standards of the Federal Government in which he is asked to coöperate with that bureau and with the sealers of weights and measures of other states, to improve the conditions affecting commercial weights and measures. The communication calls his attention to the fact that the number of convictions for the use of dishonest weights and measures in localities where rigid inspection is maintained makes it evident that "the amount of fraud in states and cities where there is no inspection, must be enormous, and unfortunately the loss falls upon those too poor or unfortunate to

protect themselves." The federal government is interested in the establishment of uniform weight and measure laws throughout the United States, as the imperfections of many state laws, combined with a very deficient system of inspection and sealing, undoubtedly lead to many abuses on the part of unscrupulous dealers.

Among the laws passed in 1907 and 1908 the most comprehensive was that of New Jersey ('08 ch.259) establishing uniform standards of weights and measures to conform to those kept in the National Bureau of Standards in Washington. Laws similar in character, though not as wide in scope, were enacted by different states in various parts of the country; the laws, whether newly enacted or amendments of the already existing statutes, are in keeping with the state legislation of previous years, regulating the methods of measuring and weighing agricultural products, coal, ice, milk etc., and providing penalties for misrepresentation. A passing notice may be taken of an amendment of the Ohio statutes ('08 p.132), which makes it unlawful not only to sell but also knowingly to purchase by means of false weights or measures. New York ('07 ch. 684) prohibited the sale of apples, pears and peaches grown elsewhere as state fruit and fixed the size of barrels ('08 ch.486) in which the fruit must be sold. Massachusetts passed in rapid succession three amendments, all relating to the sale of coal and coke, ordering that the bags or baskets in which the coal is sold should bear the name of the person putting the same up and should indicate the quantity or weight contained in the receptacle. Measures regulating the sale of coal were also passed by the states of Mississippi ('08 ch.206), Rhode Island ('08 ch.1563) and Washington ('07 ch.100); the latter made it a misdemeanor to sell a short weight ton of coal.

Delaware ('07 ch.167), New Jersey ('07 ch.150) and Pennsylvania ('07 no.56) established standard measures for milk and cream, providing penalties for their sale in receptacles not conforming to the standards, while New Hampshire found it necessary to put on her statute books a law ('07 ch.20), stating that dealers in ice and drivers of ice wagons must weigh ice at the request of the purchasers.

Comparatively few new laws were enacted relating to the appointment of inspectors or sealers of weights and measures; one of the most important of these was the law of Massachusetts ('07 ch.534) creating the office of a commissioner of weights and measures to be appointed by the Governor and the council and to be aided in his

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work by four inspectors. New Mexico ('07 ch.98) made provisions for the establishment of county inspectors of weights and measures, and North Dakota ('07 ch.273) appointed county sheriffs for the work of inspecting and sealing of scales, balances etc.

**Adulterations and imitations. Branding. Inspection.** The passage of the Federal Pure Foods and Drugs Act of 1906, stimulated state Legislatures to adopt measures preventing and punishing the adulteration of articles liable to affect public health. These laws are considered in the *Review of Legislation on Public Health and Safety*. As regards other products, the laws of 1907 and 1908 pay particular attention to the adulteration of stock feed, commercial fertilizers, oils, paints and petroleum, and to the misbranding of gold and silver ware.

Of the four laws regulating the sale of commercial feed for stock, two, those of Kansas ('08 ex. sess. ch.75) and of Ohio ('08 p.81), are amendments, the Ohio amendment making it obligatory for packages of feed stuffs to be provided with labels, showing the products from which the feed is made, its chemical analysis, and the names of the manufacturer and the shipper. In Virginia ('08 ch.188) the sale of stock feed is placed under the supervision of the newly created Dairy and Food Commissioner in the Department of Agriculture and Immigration.

Eight laws, six original and two amendments, were passed dealing with the sale of oils and paints. Iowa ('07 ch.131), Minnesota ('07 ch.421), South Dakota ('07 ch.196) and Ohio ('08 p.118) require that the paints should be clearly and distinctly labeled; the labels must show the name and address of the manufacturer of, or the dealer in the article, and the percentage of each ingredient, both solid and liquid, contained in the can. The sale of adulterated paints has been made a misdemeanor punishable by a fine. Minnesota intrusted her Dairy and Food Commissioner with the enforcement of the law.

Washington ('07 ch.192) and Ohio ('08 p.513) created the position of a State Oil Inspector, with the object of supervising the examination and the testing of oils, gasoline, naphtha etc. The laws establish standards, indicate how the tests should be made and fix penalties for frauds. Michigan ('07 no.178) passed a law requiring the labeling of containers of gasoline, benzine or naphtha; a similar law was enacted in 1908 in Ohio ('08 p.245) and one, somewhat more limited, dealing with gasoline only, in Oklahoma ('08 ch.61 art.1). Considering the dangerous nature of these substances the

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laws are most wise, and it is highly desirable that similar measures should be adopted by those states which as yet have failed to legislate in the matter. Colorado ('07 ch.200) forbade the sale or use of uninspected oil, and Connecticut ('07 ch.211) and Montana ('07 ch.121) fixed flash or fire test standards, prohibiting the sale of products which can not pass the test. Delaware ('07 ch.161), in an amendment, raised her fire test requirements.

Ohio ('08 p.343) and Virginia ('08 ch.72) amended their legislation regulating the sale of commercial fertilizers.

Six states in 1907, Colorado ('07 ch.160), Massachusetts ('07 ch.460), Minnesota ('07 ch.467), North Carolina ('07 ch.331), Rhode Island ('07 ch.1454) and Utah ('07 ch.10), and one state in 1908, New Jersey ('08 ch.188), prohibited the stamping or offering for sale of gold and silver articles in any way which might mislead the purchaser as to the fineness of the metal. The laws of different states are more or less uniform in their provisions, defining minutely the methods of branding and the penalties for frauds.

**Associations. Exchanges. Speculation.** In 1907 the Governors of Missouri, Massachusetts, Alabama, South Carolina, Texas, Arkansas and Florida successively raised their voices against gambling and for the suppression of bucket shops, recommending the enactment of most rigid laws in order to stamp out the evil of illegitimate speculation. The shops are described as "one of the most vicious forms of gambling . . . whose existence is a fruitful source of embezzlement and larceny." The Governor of Texas in his message (Jan. 16, '07) attacked all "futures" concluded on the stock and produce exchanges, declaring them "of as serious concern to society as all the gambling houses in the country."

Laws prohibiting dealings in "futures" were passed by Alabama ('07 p.448), Arkansas ('07 no.162), Montana ('07 ch.115) and Florida ('07 no.85), while California ('07 p.1360) by a constitutional amendment declared void all contracts relative to stock speculations, and Vermont ('06 no.189) made her previous law against stock gambling more comprehensive. Thirteen states passed measures forbidding the keeping of "bucket shops" and imposing penalties for the violation of the laws. These states were Arkansas, Connecticut, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri (an amendment of previous acts), Nebraska, Pennsylvania, South Carolina and Texas.

The enactment of "bucket shops" laws so vigorously pushed in 1907 was continued in 1908, and five more states, Mississippi, New York, Oklahoma, Rhode Island and Virginia were added to the list of those which through legislative enactments are trying to stamp out the evil of bucket shop gambling.

It was in 1908 that President Roosevelt, in a message to Congress (Jan. 31, '08, p.9-10), expressed his belief that the federal governments could do something towards checking "the grosser forms of gambling in securities and commodities by prohibiting the use of mails, telegraph and telephone wires for mere gambling in stocks and in futures just as it does in lottery transactions." A few months later, Governor Hughes of New York (Apr. 9, '08, p.4) recommended the appointment of a commission to inquire into the facts relative to speculation in securities and commodities with a view to ascertaining the manner in which illegitimate transactions may be prevented and legitimate business safeguarded. No action was taken on this recommendation<sup>1</sup> but New York passed a law defining and prohibiting bucket shops.

Oklahoma ('08 ch.75, art.2) enacted a measure making it a misdemeanor for a commercial agency to furnish false ratings of business firms and ordering that those who are rated should be sent records of their ratings.

**Warehouses. Markets.** Wisconsin ('07 p.1279) and Nebraska ('07 ch.205) memorialized Congress to pass an act providing uniform standards for grading and inspecting grain in terminal markets of the United States. Idaho ('07 p.529) created a State Grain Commission with power to establish standard grades of grain, to pass regulations regarding the weighing and inspecting of cereals and to adopt a form of warehouse receipts. A law similar to the one of Idaho was passed in Kansas ('07 ch.222); it created a State Grain Inspecting Department; this department has full charge of the inspection, weighing, grading and storing of grain within the state; the act provides for an appointment by the Governor of a chief inspector of grain, regulates the warehousing business, the issuance of receipts, etc. The law of Minnesota ('07 ch.252) prescribed a uniform method for handling grain in public warehouses and the use of a standard bushel. North Dakota ('07 ch.129) instructed her Governor to appoint a Grain Commission Board for the purpose of investigating into the feasi-

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<sup>1</sup>i. e. by the Legislature, but Governor Hughes on his own initiative appointed such a commission later.

bility and the practicability of establishing a state operated grain terminal elevator and of inquiring into the existing methods of grading, etc. The law passed in Missouri in 1907 ('07 p.285), dealing with state inspection of grain, was in 1908 declared unconstitutional, as it involved an invalid delegation of legislative power (Merchants' Exchange v. Knott 111 S. W. 565).

In Minnesota ('07 ch.73) the Railroad and Warehouse Commission has been empowered to fix the time for the opening and closing of general warehouses, and in South Dakota ('07 ch.209) the law gave the railroad commissioners the right to enter public warehouses at any time during business hours, should they desire to inspect the books and accounts of the warehousemen.

In 1907 Connecticut, Illinois, Iowa, Massachusetts, Minnesota, New Jersey and New York adopted uniform warehouse receipt laws; similar laws were adopted in 1908 by Louisiana, Ohio, Rhode Island and Virginia. The way is thus being paved for a long needed uniformity in legislation regulating the issue, the negotiability and the transfer of this important business document. The laws passed regulate also the obligations and rights of warehousemen with regard to their receipts.

**Regulation and licensing of trades and occupations.** Sixty laws, of which 36 were new statutes and 24 amendments, were passed in 1907; they deal with accountants, auctioneers, barbers, commission merchants, cotton ginner, gypsy fortune tellers, hawkers and peddlers, horseshoers, junk and second hand dealers, hotel-keepers, nurses and veterinary surgeons. Several subjects, such as bill posting, dentistry, pharmacy, pawnbroking, are not considered in this review, belonging more properly in other subdivisions of this work.

The number of laws passed in 1908 was much smaller than during the preceding year, only 13 original statutes and 7 amendments having been enacted.

A few old laws were declared by state courts unconstitutional; of these court decisions the most important were, the one in Washington declaring unreasonable and arbitrary the nongranteeing of licenses to barbers unless they have had two years apprenticeship under a practicing barber (State v. Walker 92 P. 775 [1907]), and the one in Utah declaring that the request for a license to peddle certain goods not produced in the state (agricultural implements, jewelry etc.) interferes with the freedom of interstate commerce and is not within the police power (State v. Bayer 97 P. 129 [1908]).

In 1907 Colorado, Connecticut and Utah, in 1908 Georgia, Louisi-

ana and Ohio created State Boards of Accountancy. The laws are more or less similar in their statutory requirements to those previously passed by other states, Louisiana ('08 no.125) and Georgia ('08 p.86), like California, Maryland or Rhode Island, not demanding preliminary education in public schools or professional training from those to be examined by the board with a view of granting a license to practise accountancy, while Colorado ('07 ch.203), Connecticut ('07 ch.202) and Ohio ('08 p.332) require graduation from a high school or its equivalent and either two or three years practical experience in the work of accountancy as a preliminary test. Penalty is imposed for an unauthorized use of C. P. A.

Of interest is the recommendation of the Governor of Utah (Jan. 15, '07 p.34-35) that the barber law of the state should be so amended as to make it an offense, punishable by fine or imprisonment or both, for a person afflicted with a disease likely to be disseminated from a barber shop, to apply for service in any shop of the state.

Texas ('07 ch.141) created a Board of Barber Examiners, to examine and license barbers in towns of over 1000 inhabitants; Connecticut ('07 ch.76) amended its law regulating barbering so as to provide for at least an annual inspection of barber shops by the examining board. Other amendments tending either towards a stricter supervision of shops with regard to sanitation or a more careful granting of licenses were passed by Missouri ('07 p.79), Oregon ('07 ch.157), Utah ('07 ch.154), and Wisconsin ('07 ch.54). New Hampshire ('07 ch.142), in a new law, prescribed minutely the rules for cleanliness in barber shops, instructing the local boards of health to see to their enforcement.

Louisiana ('08 no.308) established a Board of Engineering Examiners. Attention has been called both in this and in the preceding reviews of legislation to a general tendency towards the appointment of special state commissions to regulate trades and occupations. The years 1907 and 1908 were especially prolific in this respect. In addition to the boards mentioned the following were created: Boards of Examiners of Nurses by the states of Georgia ('07 p.117), Illinois ('07 p.383), Minnesota ('07 ch.153), New Hampshire ('07 ch.50) and West Virginia ('07 ex. sess. ch.11), Boards of Veterinary Medical Examiners by California ('07 ch.501), Georgia ('08 p.88), Louisiana ('08 no.202), Minnesota ('07 ch.419), Michigan ('07 no.244), Utah ('07 ch.122), Washington ('07



ch.124) and Wisconsin ('07 ch.334). A few states amended their statutes relative to the examination and registration of those intending to engage in the profession of nursing. North Carolina ('07 ch.542) has added to her requisites the following: applicants must be at least 21 years old, must have received a high school education or its equivalent and must be graduated from a three years training course in a hospital. Somewhat similar are the qualifications required of the applicants in the laws which created the boards of nurse examiners. Without establishing a special examining board, Iowa ('07 ch.139) provided for the examination and regulation of nurses by empowering the State Board of Health to appoint an examining committee from year to year.

Some states seem to underestimate the importance of veterinary medicine and surgery. Utah ('07 ch.122), for instance, after an elaborate discussion of the organization of the veterinary examining board, its meetings, its regulating power, and after a detailed consideration of the qualifications of applicants for examination and the licensing of those who successfully passed it, declares: "nothing in this act shall prevent any person practising veterinary medicine, surgery, or veterinary dentistry, providing said person shall not use the title "Veterinarian," "Veterinary Surgeon," or "Veterinary Dentist," or analogous title . . ." Maine ('07 ch.89) passed an amendment of substantially the same character: "any one may practise veterinary surgery, providing he does not advertise and does not use the title of V. S." An opposite view is held by Michigan ('07 no.244) and many other states whose acts specify that it shall be unlawful for any person to practise veterinary medicine without being registered by the State Veterinary Board.

Texas ('07 ch.38) and Washington ('07 ch.139) passed laws defining the duties of commission merchants and requesting that bonds should be given by them, guaranteeing the proper performance of their functions.

Alabama ('07 p.278) and Texas ('07 ch.167) established bureaus of cotton statistics in their Departments of Agriculture, cotton ginneries being requested to report at stated intervals the number of bales ginned. Louisiana ('08 no.212) intrusted the Commissioner of Agriculture with the work of fixing standards for the grading of cotton.

With three exceptions, the hawkers and peddlers acts of 1907 are amendments, all dealing with the subject of licenses. The



exceptions are the new laws of North Dakota ('07 ch.257), of Utah ('07 ch.106) and of Wyoming ('07 ch.46), establishing a license tax on itinerant vendors. In 1908 only one act was passed; it declared that a license granted to a peddler may be revoked on conviction of a crime warranting revocation (Massachusetts, '08 ch.208).

Junk and secondhand dealers are prohibited from accepting goods from intoxicated persons in Delaware ('07 ch.163) and from minors in Minnesota ('07 ch.228).

**Miscellaneous trade regulations.** The laws in this category consider printed misrepresentation of goods offered for sale, discriminations between persons or localities, trading stamps, and public and legal holidays.

Massachusetts ('07 ch.383) made the publication of false or wilfully misleading advertisements punishable by a fine, or by imprisonment, or by both. Arkansas ('07 no.298), Missouri ('07 p.234), Nebraska ('07 ch.157), South Dakota ('07 ch.131) and Louisiana ('08 no.128) prohibited unfair competition through discrimination in price between different localities with the object of destroying the business of a competitor. Kansas ('07 ch.139) prohibited exclusive contracts by means of which persons, firms or corporations conditioned that dealing in their goods should exclude dealing in the wares of others; the law must not be construed as forbidding the appointment of sole agents or the making of contracts for exclusive sales. Kansas ('07 ch.254) enjoined news agencies to furnish service to all on equal terms, and telegraph or telephone companies must refuse business of agencies violating the act.

State courts continue to hold the opinion that laws prohibiting the issuance of trading stamps are unconstitutional. Following the example of California and of Massachusetts in 1906, a similar stand was taken in Washington in 1907, the reason given being that such laws deprive of property without due process of law (*Leonard v. Bassindale* 89 P. 879).

The number of state holidays continues to grow, and the years 1907 and 1908 have done their share in adding to the list of such holidays. In 1907 two new holidays were established in Colorado, August 1 to be known as Colorado day ('07 ch.189) and October 12 as Columbus day ('07 ch.190); Lincoln's birthday was made a legal holiday in South Dakota ('07 ch.181), in Indiana ('07 ch.229) and in Kansas ('07 ch.245); Labor day in South Dakota ('07

ch.181), Good Friday in Minnesota ('07 ch.254) and in New Jersey ('07 ch.244), Lee's birthday in Arkansas ('07 no.160). In 1908 Defenders' day, September 12, and Columbus day were adopted as holidays by Maryland ('08 ch.181 p.7), Labor day by Oklahoma ('08 ch.53 art.5) and Rhode Island Independence day, May 4, by Rhode Island ('08 ch.1591).

**Encouragement of industries.** The Alaskan-Yukon Pacific Exposition, in Washington, and the Jamestown Exposition, in Virginia, prompted the passage of many acts by different states, endorsing the expositions, appropriating money and making provisions for state exhibits, creating exposition commissions, etc.

The problem of attracting desirable immigrants into the states is discussed in 1907 in a number of Governors' messages. The Governor of South Dakota (Jan. 8, '07 p.6) urges the creation of an immigration commissioner, the Governor of Washington (Jan. 14, '07, p.36-37) suggests the establishment of a state board of publicity, the Governor of Florida (Apr. 2, '07, p.55-56) calls the attention of the legislators of the state to the Department of Agriculture, Commerce and Immigration in South Carolina and expresses his belief that a similar department, if established in Florida, could be of great value in securing permanent settlers both from abroad and from other parts of the United States. Other governors, whose messages deal with the benefits of immigration and with the steps to be taken for its encouragement are those of Alabama, Delaware, New Mexico, North Carolina, North Dakota, South Carolina and Wyoming.

Either in response to these recommendations or independently a number of state boards were created for the purpose of advertising state resources and attractions, and of encouraging immigration. The names of these boards vary, in Alabama ('07 p.313) receiving the name of an Immigration Board, in North Carolina ('07 ch.924) of a Department of Agriculture, Immigration and Statistics, in Nevada ('07 ch.185) of a State Industrial and Publicity Commission, etc. Other states which legislated in the matter were Delaware ('07 ch.116), Minnesota ('07 ch.267), South Dakota ('07 ch.76), Tennessee ('07 ch.469), Wisconsin ('07 ch.407) and Wyoming ('07 ch.75).

In 1908 the only message dealing with immigration is Governor Hughes' of New York (Jan. 1, '08, p.23). He discusses the necessity for creating a commission to investigate the condition of immigrants from foreign countries who remain in large numbers in

New York. Acting upon this recommendation the state ('08 ch.210) voted \$10,000 for the establishment of a commission of 9, appointed by the Governor, to inquire into the condition and the industrial opportunities of aliens in the State.

**Navigation. Waterways.** Many laws in this category are of purely local interest; they consider pilotage, towage, river obstructions, night lights on vessels, disposal of wrecks, improvements of wharves and docks, etc.

The awakening of public interest in inland waterways found its expression in the creation of a Waterways Commissioner in Wisconsin ('07 ch.429), with the same salary and qualifications as a Railroad Commissioner of the state; in the establishment of a Department of Inland Waterways in New Jersey ('08 ch.15); in the appointment of a Board of Commissioners of Navigation for Delaware river in Pennsylvania ('07 no.322), and in the formation of a committee of 15, in Illinois ('07 ex. sess. p.103), to investigate the rights of the state in certain navigable waters, the development of water power and the building of deep waterways. The improvement of Illinois waterways found a warm exponent and supporter in the person of Governor Deneen, whose message of October 8, 1907, (p.1-3) dwells at great length on the subject. Governor Mead of Washington (Jan. 14, '07, p.31-32) urged joint action with Oregon and with the federal government for the improvement of the Columbia river. Kansas ('07 ch.438) memorialized Congress, requesting it to provide for the improvement of the Mississippi, Missouri and Kansas rivers, and Arkansas ('07 p.1268) indorsed the proposition of the National Rivers and Harbors Congress for an annual appropriation by the United States of \$50,000,-000 for the improvement of waterways.

**Mines and mining.** In 1907 the subject of mines and mining was considered in the messages of the Governors of Colorado, Minnesota, Nevada, Oregon, Utah and Wyoming. The Governor of Colorado urged (Jan. 3, '07, p.12-13) a revision of the somewhat obsolete coal mines law of the state; he expressed his belief that "many improvements could be made which would tend to prevent accidents and protect the lives of workmen, as well as being of material advantage to the operators themselves." The Governor of Minnesota (Jan. 9, '07 p.17-18) advised the organization of a state department of mining and the creation of the position of a state commissioner of mines, the department to be intrusted with the enforcement of state mine inspection and regulation laws, the



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examination of the mineral resources of public lands, etc. The Governor of Nevada (Jan. 21, '07 p.3-4) suggested the creation of the office of state mineralogist whose duty it would be to scientifically examine the mining claims in the state. Other messages dealt largely with the fake mining companies floating worthless stock "for the purpose of enriching the promoter at the expense of the honest but deceived investor." In the opinion of the Governors such promoters should be deemed guilty of felony and punished accordingly. California, in a statute enacted in 1905, provided for a punishment by imprisonment for a term not exceeding two years, or a fine of not more than \$5000, or by both fine and imprisonment. Somewhat similar provisions were adopted by the American Mining Congress in 1906 in their bill which they decided to submit to various state Legislatures as a desirable measure which would, if adopted, check the promotion of illegitimate mining enterprises.

As to mining legislation, the year 1907 has to its credit 42 laws either original or amendments and revisions of existing statutes; only two laws were passed in 1908, both in Oklahoma, one ('08 ch.54 art.1.) creating a State Mining Board and regulating the work in the mines, and the other ('07 ch.67 art.1), considering the transportation of natural gas by means of pipe lines.

California ('07 p.1367) and Idaho ('07 p.582) placed themselves on record as desiring the establishment of a Federal Department of Mining. Texas ('07 ch.178) and West Virginia ('07 ch.78) created State Mining Boards, with the object of providing a more efficient system of regulation and inspection of mines and mining operations. Other laws passed in 1907 deal with surveys of mining regions, with mineral exhibits, mining claims, ore analysis, etc.